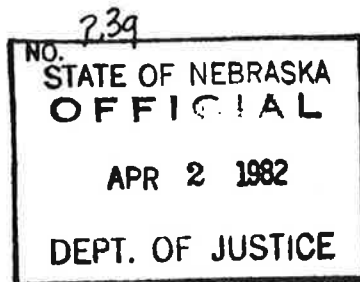


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



March 31, 1982

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SUBJECT: Authority of county board relating to  
budgets of county health board and  
county community hospital

REQUESTED BY: Loren L. Lindahl, Saunders County  
Attorney, Wahoo, Nebraska

OPINION BY: Paul L. Douglas, Attorney General  
Marilyn B. Hutchinson, Assistant Attorney General

QUESTION: 1. Does the county board have authority  
to "trim" the budget request of the county  
health board?

CONCLUSION: 1. Probably not.

QUESTION: 2. Does the county board have authority  
to "trim" the budget request of a county  
community hospital?

CONCLUSION: 2. No.

Saunders County has a county health department created pursuant to Neb.Rev.Stat. §71-1628 (Reissue 1976) and organized pursuant to Neb.Rev.Stat. §71-1630 (Supp. 1980). The powers of the county board of health are set forth at Neb.Rev.Stat. §71-1631 (Supp. 1981). Among those powers are the power to "(5) make provision for suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties" and "(13) fix the salaries of all employees, including the health director."

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Neb.Rev.Stat. §71-1629 (Reissue 1976) provides:

Any county board of such a county shall be authorized to (1) incur the expenses necessary for the establishment and maintenance of such county health department or of a city-county health department, (2) levy and collect an annual tax, except in counties having a population of more than three hundred thousand inhabitants, to meet and pay the same, and (3) appropriate and use any unused funds in the general fund belonging to the county for the purposes set forth in sections 71-1626 to 71-1636.

There is no express provision that the county board of health certify its budget to the county board. However, in practice, the county board of health does prepare a budget request which is presented to the Saunders County Board for approval and inclusion in the county budget. This practice appears consistent with the statutes cited above.

The situation is thus similar to that where the board of trustees of a county community hospital is directed by Neb. Rev.Stat. §23-343.06 (Reissue 1977) to "certify the amount necessary to maintain and improve such facility or facilities for the ensuing year" to the county board which, pursuant to Neb.Rev.Stat. §23-343.08 (Reissue 1977) "shall annually levy a tax upon all the taxable property within the county, except intangible property, sufficient to defray the amount required for such maintenance and improvement as certified to it by the said board of trustees."

In Attorney General Opinion No. 117, August 14, 1959, we concluded that the language of §23-343.08 "is mandatory and that the county board has no discretion in the matter but must levy the tax which is certified to it by the board of trustees of the hospital." Neither that statute nor the pertinent subsection (2) of §23-343.06 has been amended or otherwise interpreted by the courts since that time.

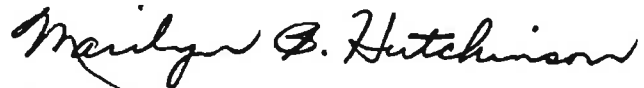
Thus, as we said in Attorney General Opinion No. 265, November 17, 1976, it is still "a judicially unresolved question as to whether the county board may under some circumstances be possessed of inherent power to levy a tax for something less than that which would produce the amount certified by the hospital board." However, we think a court would conclude that

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the county board has no discretion in the matter but must levy the tax which is certified to it by the board of trustees of the hospital. It would probably reach a similar conclusion with regard to the budget for the county board of health.

Sincerely yours,

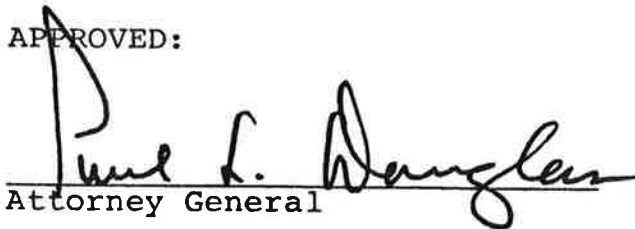
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